

# **EXHIBIT 5**

NANCY V. POWELL  
N.V.POWELL, A PROFESSIONAL CORP.

310 BRYANT STREET  
PALO ALTO, CALIFORNIA 94301  
PHONE: (650) 324-2526  
[powellesq@hotmail.com](mailto:powellesq@hotmail.com)

November 15, 2016

George Fiegl  


re: Loan transaction/ Van Buren Estates (\$7.2M Judgment)  
Theft Opinion

Dear Mr. Fiegl;

I am pleased that the Court, after Jury Trial, rendered a Judgment which confirmed my opinion as expressed in my February 8, 2012 letter (a copy of which is attached). In February 2012 I reported to you my findings and my opinion after a review of the facts and the law regarding your loan to Van Buren Estates, LP. In my nearly 40 years practicing law in California and my years as a Deputy District Attorney (DDA) in Santa Clara County, California I can say that you were certainly a victim of criminal wrongdoing. I am so pleased that in this case a Jury of 12 impartial people heard the evidence and testimony and came to the same conclusion that I did – that you were intentionally defrauded and information was fraudulently concealed from you such that you were damaged in the amount of \$7,200,000.

The elements of criminal conduct under Penal Code 484 and 532(a) are clearly reflected in the Judgment on Jury Verdict which awarded you \$7,200,000. I have attached a copy of that Judgment for your convenience and for the convenience of anyone considering this opinion letter. I believe that if the same evidence had been presented to a jury in a criminal court of law there would have been criminal convictions of Stuckenbrock and Lodato. From the Court's decision and the Jury's Findings, all of the elements of Penal Code 484 and 532(a) are present. In applying Penal Code 484, they were guilty of taking property from you by fraudulent representation. In applying Penal Code 532(a), they were guilty of making a false written statement, knowing that the statement was false, with the intent that you would rely on the statement and give them money. As I back in 2012, with the budget and manpower constraints it is difficult to get the DA to pursue complex cases such as this, but that does not diminish the fact that a crime was committed and you were a victim of that crime.

The Jury findings show that you were a victim of a crime and as a result were damaged in the amount of \$7,200,000. If you look at those Findings which can be found as Exhibit A to the Judgment, you will find the following findings which show criminal conduct by these defendants:

**Jury Finding of Intentional Misrepresentation:**

as to Stuckenbrock (pgs4,5) as to Lodato (pgs8,9) as to Van Buren Estates (pgs 16,17)

Found false representation of an important fact given to you;

Found each defendant knew the representation was false or made the representation without regard for its truth;

Found you relied on the representation and that your reliance was reasonable;

Found that your reliance was a substantial factor in causing the harm you suffered.

February 28, 2014

To George Fiegl

**Jury Finding of Concealment:**

as to Stuckenbrock (pg 6) as to Lodato (pg 10) as to Van Buren Estates (pg 18)

Found failure to disclose important fact(s) that you didn't and couldn't have known;

Found these defendants intended to deceive you by concealing the fact;

Found you relied on the deception and that your reliance was reasonable;

Found that the concealment was a substantial factor in causing the harm you suffered.

**Jury Finding of Conspiracy to Commit Fraud & Conspiracy to Breach Fiduciary Duty**

as to Stuckenbrock and Lodato (pg 20) the Jury found these defendants agreed to deceive you and

Found that Stuckenbrock had a fiduciary duty to you that was breached by this fraud.

I believe it is also significant that the Court dismissed the causes of action for negligent misrepresentation as against all of the Defendants. If any of them were found to be negligent regarding the representations made to you that would show that they were perhaps innocently mistaken about information or facts they gave you regarding your investment. The fact that the Judge threw out the causes of action based on negligence communicates that there was nothing negligent or innocently wrong about the representations made to you by the Defendants. It was clear to the Court that misrepresentations were made intentionally and designed to deceive you of funds. Again, the Penal Code 484 provides that "Every person who takes personal property from another by false or fraudulent representations or pretense of defrauds any other person of money ...and thereby fraudulently gets or obtains possession of money..., is guilty of theft." The findings of the Jury as supported by the Judgment of the Court show that the elements of Theft (PC 484) were clearly shown in the Trial.

In addition, the crime of Theft by False Pretense (Penal Code 532(a)) was proven in your trial. Under this code section, if a person makes a false statement in writing with the intent that it be relied on respecting the financial condition or means or ability to pay for the purpose of procuring money, and the person knows that a false statement has been made, that person is guilty of Theft by False Pretense.

So, congratulations on persevering to obtain findings against two criminals who should be facing sentencing for their crimes. They both lied to you and had information withheld in order to get you to give them money. As I said before and now the Judge and the Jury has said: If you had been told the truth and told all relevant information which was available to the Defendants, you would not be out the \$7,200,000 they got from you.

Please contact me if you have any questions regarding the above.

Sincerely,

Nancy V. Powell